REMARKS

Entry of the foregoing amendments prior to examination on the merits is respectfully requested. By the present amendments, minor errors in the claims have been corrected. No new matter has been added.

The Office Action dated July 3, 2006 sets forth a restriction requirement. In response, applicants elect Group I, comprising claims 1-14, directed to methods of testing bacteria.

The Office sets forth a further requirement for an election of two nucleotide sequences from among SEQ IN NOS: 1-13. (Applicants note that SEQ ID NOS:1-19 are recited in the claims.) This part of the restriction requirement is traversed.

The Examiner cites Manual of Patent Examination Procedure § 803.04 for support of the requirement. However, the Examiner's citation of the relevant section stops short, being truncated in mid paragraph. Applicants respectfully request that the Office follow the procedures set forth in Manual of Patent Examination Procedure § 804.03, which continues after the text cited by the Examiner as follows:

> Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Director has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application. See Examination of Patent Applications Containing Nucleotide Sequences, 1192 O.G. 68 (November 19, 1996).
>
> It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined. Furthermore, nucleotide sequences encoding the same protein are not considered to be independent and distinct inventions and will continue to be examined together.

Manual of Patent Examination Procedure § 803.04 (Eighth Edition, 2001; Fifth Revision August 2006)

In consideration of this official statement of current U.S. Patent and Trademark Office policy, which was in effect as of the mailing of the Office Action and is currently in effect, having been retained in the current revision dated August 2006, Applicants request examination of SEQ ID NOS: 7-13 and 18-19 together, totaling nine sequences.

Applicants respectfully submit that examination of these sequences together could not impose a serious burden upon the Examiner. SEQ ID NOS:7-13 and 18-19 correspond to probes that bind a limited number of related genes that control resistance and sensitivity.

For example, SEQ ID NOS: 9-12 are sensitivity-specific and SEQ ID NOS: 18-19 are resistance-specific probes for a single gene, PBP1a. Therefore the search for art related to these sequences must be substantially overlapping.

SEQ ID NOS:7-8 are sensitivity specific probes for PBP2x. Applicants note that SEQ ID NOS:1-6 and 14-17 were examined together in U.S. Patent Application 09/403,609, now U.S. Patent Number 6,713,254, in which the procedures set forth in Manual of Patent Examination Procedure § 803.04 were followed. Like SEQ ID NOS:7-8, previously examined SEQ ID NOS:1-6 are specific for PBP2x. SEQ ID NO: 13 is a sensitivity specific probe for PBP2b. Thus, many issues that might arise in the present application have been well developed during examination of the parent application, which will further reduce the burden upon the Examiner in considering SEQ ID NOS: 7-13 and 18-19.

In view of the foregoing, there can be no serious burden in examining SEQ ID NOS:7-13 and 18-19 together in the present application. Manual of Patent Examination Procedure § 803 states: "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." Accordingly the present restriction does not meet the criteria set forth in Manual of Patent Examination Procedure §

803(I)(B) and should be modified so as to comply with U.S. Patent and Trademark Office published policies for examination procedures.

It would not serve the interests of the Office or the public to force the Office to expend resources and time processing multiple additional applications and to force the pubic to await and analyze further divisional applications to determine the scope of Applicants patent rights arising from this application when each of the nucleotide sequences recited in the claims that were not elected in the parent application could be examined together in the present application in accordance with Office policy and without imposing a serious burden upon the Examiner.

Applicants elect, with traverse, SEQ ID NOS: 9 and 18. Applicants respectfully request that the restriction requirement be modified such that at least SEQ ID NOS: 7-13 and 18-19 are examined together in the present application in accordance with Manual of Patent Examination Procedure § 803.04. At the least, applicants submit that SEQ ID NOS:9-12 and 18-19 (all probes for the PBP1a gene) should be examined together.

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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